IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

OP.No. 5143 of 2003(K)

PETITIONERS:
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1. **P.S.PRADEEP, S/O. PANAKKAPARAMBIL, SANKARANARAYANAN, THRITHALOOR, VADANAPPILLY, CHAVAKKAD.**

2. **P.S.DINESH, S/O. PANAKKAPARAMBIL, SANKARANARAYANAN, THRITHALOOR, VADANAPPILLY, CHAVAKKAD.**

BY ADV. SRI.T.A.SHAJI

RESPONDENTS:
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1. **THE DISTRICT COLLECTOR, THRISSUR.**

2. **THE TAHSILDAR, CHAVAKKAD.**

3. **THE ASSISTANT EXCISE COMMISSIONER, THRISSUR.**

4. **THE EXCISE COMMISSIONER, COMMISSIONERATE OF EXCISE, THIRUVANANTHAPURAM.**

5. **COMMISSIONER, LAND REVENUE, THIRUVANANTHAPURAM.**

6. **STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVT., TAXES DEPARTMENT, THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SRI.V.T.K.MOHANAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 26/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.5143/2003

ORDER ON CMP. NO.9093/2003 IN OP. NO.5143/2003

DISMISSED

26.07.2007 SD/- T.R.RAMACHANDRAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE NOTICE OF SALE OF IMMOVABLE PROPERTY DT. 22.7.02 OF THE 2ND RESPONDENT.

EXT.P2:- COPY OF THE NOTICE DT. 20.11.02 OF THE 1ST RESPONDENT.

EXT.P2(a):- COPY OF THE NOTICE DT. 20.11.02 OF THE 1ST RESPONDENT.

EXT.P3:- COPY OF THE REPLY DT. 4.12.02 SUBMITTED BY THE PETITIONERS.

EXT.P4:- COPY OF THE ORDER DT. 31.12.02 OF THE 1ST RESPONDENT.

EXT.P4(a):- COPY OF THE ORDER DT. 1.1.03 OF THE 1ST RESPONDENT.

EXT.P5:- COPY OF THE JUDGMENT DT. 23.1.093 IN OP. NO.2503/01 OF THIS HONOURABLE COURT.

EXT.P6:- COPY OF THE ORDER NO.K.DIS 2923/03/LR(B)7 DT. 7.2.03 OF THE 5TH RESPONDENT.

EXT.P6(a):- COPY OF THE ORDER NO.K.DIS 2922/03/LRB7 DT. 7.2.03 OF THE 5TH RESPONDENT.

/TRUE COPY/

P.S. TO JUDGE

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T.R. Ramachandran Nair, J.

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O.P.NO.5143 of 2003

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Dated this the 26th day of July, 2007

JUDGMENT

The petitioners are aggrieved by the order passed by the first respondent under Section 65 of the Kerala Revenue Recovery Act ordering arrest and detention of petitioners in civil prison for non-payment of kist and abkari dues. The petitioners jointly bid in auction the privilege to vend toddy shop Nos.49 to 108 in Chalakudy Excise Range for a period of three years. There were various proceedings against the petitioners by way of cancellation of licence and for collecting arrears of kist and security amount forfeited. There were demands to pay balance amount of kist for a period of three years, viz. Rs.4,67,16,223/- and interest thereon. Earlier, they approached this court by filing O.P.No.5064/1999 challenging the notice issued to them and consequential proceedings. By judgment dated 31.1.2002, this court directed the Excise Commissioner to reconsider the question of liability in regard to the petitioners. Finally, by an order dated 28.5.2002 the petitioners were held liable to pay rental for the years 1998-99 and 1999-2000. BY another order dated 28.5.2002 the security deposit was also forfeited. The petitioners thereafter challenged the same in O.P.

No.17197/2002 in which, in C.M.P. No.29297/2002 this court granted stay on condition of deposit of 50% of the amount within two weeks. The petitioner sought for a modification of the order which was not allowed and a writ appeal was also filed. The same was also dismissed.

2. The District Collector thereafter proceeded against the petitioners to recover the amount under the Revenue Recovery Act. Ext.P4 is the order by which the arrest and detention of the first petitioner was ordered by the District Collector and Ext.P4(a) is the notice issued to the second petitioner. Again the petitioners filed O.P. No.2531/2003 before this court and by judgment dated 23.1.2003 this court directed the 5th respondent to consider and pass orders on the revision petition filed by the petitioners. The revision petition has also been disposed of as per Exts.P6 and P6(a). Challenging the same, the petitioners have approached this court by filing this original petition.

3. Learned counsel for the petitioners submitted that there are no materials to invoke Section 65 of the Revenue Recovery Act and there had not been any willful withholding of payment by the petitioners. It is also pointed out that the entire movable and immovable properties of the petitioners are under attachment and the movables have been sold already. It is also stated in Ground B that the sale of the immovable properties are

also in progress.

4. The respondents have filed a counter affidavit, wherein it is pointed out that the steps taken under Section 65 of the Act are justified in the facts and circumstances of this case. The counter affidavit also reiterates that the sale proceeds of attached properties are not enough to liquidate the huge arrears which prompted them to proceed under Section 65 of the Revenue Recovery Act.

5. As regards the liability of the petitioners, it is seen from the judgment in O.P. No.17187/2002 filed by the petitioners herein that this court dismissed the original petition holding the view that the challenge against the demand raised under Rule 6(28) and in terms of the agreement executed by the petitioners, it is only to be rejected. It is stated by the learned counsel for the petitioners that the writ appeal filed against the above judgment was dismissed, against which a Special Leave Petition was filed by the petitioners. It is also stated that a review petition is pending on the basis of the observation made by the Hon'ble Supreme Court in the Special Leave Petition.

6. Any way, at present there is no interim order in force against the revenue recovery proceedings by way of sale of the immovable properties. In the original petition, the petitioners have contended that all the

immovable properties are under attachment and therefore they are unable to raise any source for payment of the dues in question. That the properties are under attachment is not disputed. Therefore, the respondents can proceed to realise the amount from the attached properties initially and if the amounts are not sufficient, they can proceed in accordance with law to enforce the claim thereafter, after notice to the petitioners.

The original petition is therefore disposed of directing the respondents to take expeditious steps for recovery of the dues from the petitioners by sale of the immovable properties initially and to continue other steps if further liabilities remain on the part of petitioners.

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(T.R. Ramachandran Nair, Judge.)

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T.R. Ramachandran Nair, J.

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O.P.NO.5143 of 2003

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JUDGMENT

26th day of July, 2007